

EXHIBIT F

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September 14, 2023

Via Email

Molly M. Lens
Matthew Z. Kaiser
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O'Melveny & Myers LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, CA 90067-6035

Re: *Yonay v. Paramount Pictures Corp.*, No. CV 22-3846 PA (GJSx)

Molly, Matthew and Danielle:

This letter is intended to once again meet and confer with you pursuant to Local Rule 37-1 concerning Paramount's deficient document production and discovery abuse.

Although Paramount provided a privilege log, we have yet to receive privilege logs corresponding to many of the documents Paramount has chosen to redact or withhold as privileged. Paramount must promptly furnish privilege logs so that that Plaintiffs can assess the propriety of Paramount's redactions and retention of relevant responsive documents.

Notwithstanding this failure, there are numerous examples of redactions in Paramount's document production where no plausible legal ground for withholding such information could be asserted. Illustrative of this is Paramount's substantial substantive redactions of emails between its non-attorney executives (Jenny Tartikoff, VP of Global Comms.; Russell Nelson, VP of Awards) and individuals at USC who are also not attorneys (Hugh Thomas McHarg, Assoc. Dean for Strategic Initiatives) as well as emails to persons at a PR agency retained by USC, i.e., MPRM Communications (Tiffany Wagner, Sr. Director; Alex Vlahov).¹ Because the redacted documents pertain to whether *Top Gun: Maverick* is "based on" characters from the 1983 Story *Top Guns* by Ehud Yonay² they are clearly discoverable and responsive to requests which Paramount agreed to comply with.³

¹ See TGM0124419-TGM0124430.

² See *id.*; see also Steve Pond, 'Women Talking' Wins Scriptor Award for Adapted Screenplay, The Wrap (Mar. 4, 2023), <https://www.thewrap.com/scripter-award-adapted-screenplay/>.

³ See Def.'s Resps. & Objs. to Pls.' First Set of Reqs. for Produc. of Docs. ("Def.'s Resp. to Pl.'s RFP") (Feb. 6, 2023) Nos. 1, 2, 10, 13, 32, and 40. Paramount also agreed in its responses to meet and confer with respect

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In addition and without limitation, Paramount has also failed to produce the *unedited* underlying recordings, audio and/or video, and (in most instances) transcriptions thereof referenced in emails and elsewhere as documenting the relevant development of the sequel *Top Gun: Maverick* and of *Top Gun*.⁴ For instance, Jerry Bruckheimer discusses the Story at length in the highly edited creator commentary accompanying the Blue-Ray re-release of the 1986 film—which Paramount did not produce; nor did it produce the underlying unedited material. As to *Top Gun: Maverick*, *excerpts* of interviews Paramount caused to be recorded in audio and/or video format were later incorporated into the Paramount’s “production notes” as well as in home releases as “bonus material,” e.g., creator commentary,⁵ yet Paramount failed to produce the original, unedited interviews as required.

As you are aware, materials of the nature described above are discoverable, responsive to documents requests for which Paramount agreed to produce documents,⁶ and indeed, highly relevant to the issues in this case. That these materials are in the possession of Paramount and can be easily accessed by Paramount is clear, as evidenced by countless emails referencing such material and noting that copies were sent to and/or received by/from others.⁷

In addition, with the exception of correspondence regarding pre-registration, Paramount has yet to produce any documents or communications with the United States Copyright Office related to the registration of *Top Gun: Maverick* despite agreeing to provide the same.⁸

We further have serious and justifiable doubts that all responsive discoverable documents and communications in Paramount’s possession and control which refer (or relate) to Ehud Yonay or his published Story have been produced. Just yesterday, for example, my associate discovered a declassified June 10, 1983 letter from John E. Horton (who represented Paramount and received a "Government Relations" credit in the 1986 Film) to Donald E. Baruch (Chief, Audio Visual

to Nos. 14 and 32; *see also* Mar. 17 email from Molly M. Lens to Marc Toberoff and Jaymie Parkkinen. (“For RFP No. 10... As requested, Paramount confirms that its agreement includes communications about the story and screenplay.”)

⁴ *See e.g.*, Island Plaza Excel Spreadsheet of Footage TGM0017022 (Listing interview footage not produced by Paramount); June 30, 2021 email “RE: TGM - home entertainment bonus material request,” from Amanda Lundberg, CEO of 42West, to Tommy Harper & Paramount Representatives (Cindy Walker, Bob Buchi & Danielle Kupchak), TGM0027209 (“I connected with T[om Cruise] on this and he doesn’t like the interview nor any of the cuts. He wants a new interview ...”).

⁵ *See e.g.*, 2021 Emails “Re: TGM - home entertainment bonus material request” between Paramount representatives and Tommy Harper and Amanda Lundberg TGM0027201-TGM0027211 (referencing interviews sent to Herzog & Co); July 23, 2021 email re: “TGM Production Notes” from Mark Dinning to Michelle Rydberg of Paramount and Amanda Lundberg, TGM0026854, (“I’ve got loads of material... will get transcribing next week!”); July 23, 2021 Email re: “TGM Production Notes” from Michelle Rydberg of Paramount to Mark Dinning, TGM002685 (“So great to hear, Mark! Thrilled to have you working on the notes for us and look forward to discussing further once you get a chance to digest/transcribe everything!”); 2019 emails re: “RE: Top Gun ‘86 re-release” & “Bonus materials for Home Entertainment” between Paramount representatives, Tommy Harper, Amanda Lundberg, Michael Singer of Jerry Bruckheimer Films Inc., TGM0017544-TGM0017549.

⁶ *See* Def.’s Resp. to Pl.’s RFP

⁷ *See e.g., supra.*

⁸ *Id.*, Def.’s Resp. to Pl.’s RFP No. 5.

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Division, Directorate for Defense Information, Dept. of Defense), cc'ing Don Simpson, Jerry Bruckheimer and Charles Maguire, which plainly refers to the Story; yet this obviously relevant responsive document was not produced by Paramount. (“[Yonay's Story] previously provided to you, chronicles the background for the original screenplay which will be developed.”) And today we found a book that recounts the making of *Top Gun* which further indicates that additional unproduced documents and letters such as this one exist.⁹ Plaintiff, of course, will produce such relevant discovered documents to Paramount, but we should not have to scour the internet for relevant responsive documents Paramount should have voluntarily produced long ago.

As you are also aware, this is not the first instance we have brought major deficiencies in Paramount's production to the attention of counsel. Previously, on March 6, 2023, we sent Paramount a meet and confer letter addressing its obvious obstruction of normal discovery to which Plaintiffs are entitled. Paramount subsequently agreed to meaningfully cooperate in discovery. *See* March 17, 2023 email from Molly M. Lens to Marc Toberoff and Jaymie Parkkinen. (“For RFP No. 10 ... As requested, Paramount confirms that its agreement includes communications about the story and screenplay.”)

This correspondence highlights the continued failure of Paramount to produce clearly discoverable documents in its possession, custody, or control. However, the foregoing does not purport to serve as an exhaustive list of the deficiencies in Paramount's document production, nor of other discovery misconduct.

Pursuant to CACD Local Rule 37, we ask that Defendant Paramount make itself available to meet and confer on Friday, September 15, 2023. To the extent that you are not available then, please provide alternative times for Monday, September 18, 2023 to meet and confer.

Sincerely,



Marc Toberoff

⁹ *See* Lawrence H. Suid, *Guts and Glory*, pp. 495-96 (Univ. Press Ky., 2015) (referencing additional relevant letters not produced by Paramount).